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Appn. No.: 10/002,763

Grp./A.U.: 3671

**Response to Office Action
and
Request for Reconsideration of Restriction**

Office Action Mailed 5/24/2004:

1. Restriction to one of the following:

Group I - Claims 57-61,80 - claims 61 and 80 not included, classified in class 56, subclass 400.04,
Group II - Claims 81-87 based on Fig. 3-5 classified in class 56, subclass 400.19.

2. Group I and II above are distinct from each other because:

- a) Group I and Group II are related as subcombinations usable together in a single combination.
- b) Group II contains specifics of a connecting means not required of Group I. Group I has a second connecting means for "flexibly and pivotally holding" as shown in Fig. 1-2 while Group II uses a chain, cord, ring, etc. as shown in Fig. 3-5, considered different (see MPEP 806.05(d)).

Applicant Response:

If for some reason the Examiner was unable to read all the remarks and arguments previously presented, it is

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important that he reads at least the Summary and Conclusion on pp. 56-63 of the Remarks and Arguments sent on 4/13/04 as well as this paper and understand them in their entirety. This is crucial to obtaining the complete picture of what the present invention covers especially at this late stage of the prosecution. Only with this understanding can the Examiner in fairness to the applicant reject claims and allow claims that reflect the strongest patent the applicant is entitled to in view of prior art.

The scope of the invention is really not difficult to grasp considering that this is just a rake and the different embodiments are very closely related; especially if one starts from the broadest claim and gradually proceeds down to the narrower and narrower versions. The least narrow claim that overcomes prior art should be the broadest claim allowable. Consequently, all the other narrower versions should also be allowable. Should this broadest claim happen to be a linking claim, all the other embodiments linked should be examined.

Exhibit D shows how the resilient member of the present invention is not equivalent to Mitchell's rib. Exhibits A, B, and C show the relationship among the pending claims in the application (which should include those withdrawn by the Examiner) in the form of flow charts. Hopefully, these will aid the Examiner.

Request for Reconsideration and Withdrawal or Modification of the Requirement

The applicant disagrees with the requirement for restriction and is requesting the reconsideration and

withdrawal or modification of the requirement under Patent Rule 1.143 based on the following reasons:

1. Restriction between Group I and Group II is not Justified for the following reasons.

a) Restriction election is made between two groups of claims that were already examined on their merits. Group I was found to be allowable and Group II simply objected to.

b) Group I and Group II claims belong to the same class, subclass, and field of search.

According to the Examiner, Group I belongs to class 56, subclass 400.04 while Group II belongs to class 56, subclass 400.19. The applicant disagrees. Both invention groups can be viewed as belonging to subclass 400.04 and 400.19. Subclass 400.04 cover rakes that are convertible into tools for other purposes. Both groups are usable for raking and picking debris. Subclass 400.19 cover rakes that may be collapsed or folded or the parts adjusted with respect to each other. If the Examiner considers Group II to be in this subclass, so should Group I. This is because both groups have parts that have to be adjusted to effect the raking and picking operations. For example, in both Group I and Group II, the rake units (heads and handles) have to aligned before being connected for raking and have to be pulled apart in the same direction for picking despite the absence of the hand grip in Group II.

c. Group I and Group II are each not subcombinations usable together in a single

combination, contrary to the Examiner's argument.

Examples of subcombinations would be the first connecting means, the second connecting means, the hand grip, the rake heads, the rake handles, or any subcombination of two or more of these subcombinations that by itself does not produce the embodiment of the invention. These are the subcombinations that are usable together in the single combination which is the first embodiment. The applicant is not independently claiming any of these subcombinations.

If Group I and Group II are indeed subcombinations usable together in a single combination, then that single combination would comprise of two picking rakes - one picking rake connected by at least a gripping connection and the other connected by at least a pivotal connection, the two picking rakes connected by what???. It will also be a combination of four handles and four rake heads. This definitely does not fit any of the embodiments of the present invention.

Group I and Group II are each patentable combinations covering the same embodiment but approached in different ways. The amended claims are written such that the patentable dual-headed, dual handled picking rake with the gripping connection and hand grips (claim 57) and the patentable dual headed, dual handles picking rake with the pivoting connection (Claim 81) end up with the same embodiment but approached in two ways depending on what connecting means is recited first. (See Exhibit C)

Even if the Examiner still insists that Groups I and II are each subcombinations of the embodiment covered in Figs. 1-A to 5-C (which they are not), even if they are not usable together, they are nevertheless subcombinations that are essential to the combination.

MPEP 806.05(c)II states:

"Subcombination Essential to Combination
AB/B No Restriction

If there is no evidence that combination AB is patentable without the details of B, restriction should not be required. Where the relationship between the claims is such that the separately claimed subcombination B constitutes the essential distinguishing feature of the combination AB as claimed, the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility."

Subcombination B would be the embodiment of claim 57 or claim 81. The combination AB would be the embodiment covered by Figs. 1-A to 5-C (First Embodiment). Therefore, since claims 57 and 81 are each patentable they each must have the essential elements to the First Embodiment as claimed in Claims 116 and 108 respectively. (see Exhibit C)

d) Group I and Group II is also not separately usable, contrary to the Examiner's argument, therefore further supporting the non-distinctness between the two. The Group II rakes cannot be used for any other purpose but as a rake that can also pick debris just like the Group I claims. As claim 81 recites, they are

connected together by a connecting means that aligns the rake heads and handles in one plane during the raking operation. The dependent claims 82-86 further define these connecting means.

Please note that Group I as claimed in claim 57 and Group II as claimed in claim 81, are each already sufficient to overcome prior art even with the recitation of just gripping connection or the pivotal connection with or without the addition of the hand grips or another specific connection means. The side-by-side rake handle arrangement, the method of operation, and the capability of the connecting means or either the gripping or pivotal connection already distinguish the invention from prior art. More detailed arguments pertaining to the novelty and unobviousness of claim 81 are argued in pp.1-4 of the Supplemental RCE. The novelty and unobviousness of claim 57 are argued in pp. 7-12(hand grip) and pp. 13-14(gripping connection) of the RCE. Figures presented as exhibits with the Response to the first OA of the RCE also show the distinguishing features. Exhibit D also show that the gripping connection operates on a gripping plane normal to the raking plane where Mitchell's semi-circular rib operates. This difference is very significant particularly in a rake.

e) The absence of specifics for a connecting means in a claim does not necessarily mean unlimited scope of connecting means and distinctness over another claim that contains specifics of the connection means

The Examiner contends that Group II claims contain specifics of a connecting means not required of Group I. This is understandable because a claim that does not require the specifics of a particular element will require the specifics of another element or the inclusion of more elements in order to overcome prior art. The connecting means in question is the pivotal connection. Claim 57 may not contain specifics of the pivotal connection present in Claim 81 but it was made to contain specifics of the hand grip and the specifics of the gripping connection not needed in Claim 81. That does not necessarily translate to Group I and Group II being distinct from each other. The two groups are just different approaches to claiming the same embodiment.

The specific elements "... aperture...through which a second connecting means..." becomes unnecessary in claim 57 in order to overcome prior art. The connecting element can be recited simply as "connecting means on the first and second handles for...joining... comprising a gripping connection...".

Please note that the Mitchell main claim does it this way. There was even no mention of any specific connecting means other than that they are on the rake parts. **The dependent claims (in Mitchell) introduce each of the connecting means one at a time each time with the word "comprise"**. In that way, if even just the firstly recited connecting means is copied in addition of course to all the other elements, the product infringes.

The absence of specifics of a connecting means in a parent claim does not necessarily mean that the

connecting means is unlimited in scope. Only the connecting means described in the specifications are covered. Patent law 35 USC112 par.6 confirms this:

"An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

In other words, the specificity of the connecting means is implied in the claim. Even if the gripping and pivoting connections in claim 57 are replaced with just "connecting means comprising a gripping connection" the result is still within the embodiment covered by Fig. 1-A to 5-C because the pivotal connection in these figures are described in the disclosure.

In light of the compelling validity of the arguments above, the applicant has amended claim 57 and added claim 116 accordingly.

f) The second connecting means in Group I pertain to the same set of means in Group II

The words "second connecting means" is replaced with "pivotal connection" to avoid confusion when examining across claims having the same connecting means.

It is apparent that there is a confusion regarding what the pivotal connection entail. Please remember that the Examiner drafted the original claims 57 - 60 based on the claims presented in the response

mailed 4/30/03 to the first OA on the original patent application filed 11/2001. Claims 27 and 28 (now canceled) recite the possible connecting means on the upper end of one of the rake handles. Most of them start with an aperture on one of the rake handles. That is why claim 57 has the element "aperture through which a second connecting means is extended for flexibly and pivotally holding and connecting ...".

If the Examiner refers back to canceled claims 27 and 28, it will become clear that the second connecting means recited in claim 57 should pertain to the same set of means recited in dependent claims 82-86 or independent claim 99. The chain, cord, ring, etc. go into the "aperture".

The specification clearly teaches that the second connecting means are shown in Figs. 1-A to 5-C'. It is not possible to illustrate all the possible connecting means into one picking rake. Drawing each different one in a picking rake one at a time would be unnecessary. That is why Figs. 3 to 5 were devised to summarize the other connecting means not shown with a picking rakes in Figs. 1-A to 2-C.

The pivotal connection is common to both groups and is used to flexibly and pivotally hold and connect the rake units in both groups.

Based on the above arguments, Group I and Group II claims are not distinct from each other. In this particular case, Groups I and II are also obvious over each other, therefore, should not be restricted.

According to MPEP 803, the two criteria for proper requirement for restriction are:

- a) the inventions must be independent or distinct as claimed, and
- b) there must be a serious burden on the Examiner if restriction is required.

None of these restriction criteria is met. Group I and Group II inventions are not distinct as claimed. The Examiner already examined Group I and Group II on their merits. There is surely no serious burden imposed on the Examiner for doing something that is already done. Current amendments to the Group I and Group II claims are well within the scope of the first embodiment and thus require but a cursory examination on the part of the Examiner. Therefore, restriction between Group I and Group II is not proper. Both groups of claims should be allowed. Arguments regarding the patentability of the Group II claims are amply provided in the Supplemental RCE submission.

g. The first embodiment is a patentable combination from which two patentable combinations can be derived

First, let us imagine that the pivotal connection in Fig. 1-A represents all the possible pivotal connections shown in Figs. 1-A to 5-C'. The first embodiment as shown in Fig. 1-A includes several elements working together to create a novel and unobvious combination called the picking rake. These elements are:

1. dual rake heads and dual rake handles arranged side-by-side on the same plane,
2. hand grips disposed on the midsection of the elongated member of the rake handles for holding onto during the raking, transition, and picking operations,

3. gripping connection on portions of the rake handles,
and
4. pivotal connection on the upper end of one of the
rake handles and a section of the other rake handle
proximal to said upper end.

Note that each of the four elements above do not have an equivalent in prior art as argued extensively in previous responses to OA's. Having all four in one original claim 57 is way more than enough to overcome prior art, thus, narrowing the claim unnecessarily. One novel and unobvious element is really all that is legally required to overcome prior art.

Therefore, a claim can recite just elements 1,2, and 3' and still be novel and unobvious and overcome prior art (3' is 3 plus option for adding 4). Another claim can recite just elements 1,2, and 4' and still be novel and unobvious and overcome prior art. (4' is 4 plus option for adding 3). Both claims are just two of the many different ways of claiming the first embodiment. There are many more ways depending on number of elements, the degree of novelty and unobviousness of each element, and the specifics attached to each element.

Claims 81-86 of Group II is one that includes elements 1, and 4'; still very functional and enough to overcome prior art because of the uniqueness of the combination of elements 1 and 4. Elements 2 and 3 are specified later through dependent claim 108.

Claim 57 is amended to include elements 1,2, and 3'; still very functional and enough to overcome prior art because of the uniqueness of elements 2 and 3. Element

4(second connecting means) is specified later through a dependent claim 116.

The above further supports the argument that Groups I and II embody the same first embodiment, therefore should not be restricted.

The amendments to the original Group I and Group II claims, though minor in text, have strengthened the original claims and made them more acceptable to the applicant.

2. Reason for Withdrawal of Claim 61 and/or Claim 80 is not Justified. A parent claim cannot teach away from its dependent claim because a dependent claim has all the limitations of its parent claim.

On page 34 of the Remarks and Arguments section of the RCE sent 10/30/03, the applicant stated that claim 80 can replace claim 61 because it includes structural elements that clarify the claim. Claim 80 is only a dependent claim. It is a claim having all the limitations of its parent claim. Claim 57 recites a rake handle. Claim 80 recites a rake handle that consists of telescoping tubes, a narrower version of the rake handle in parent claim 57. A recitation of just "rake handle" in claim 57 cannot teach away from a narrower version in a dependent claim. A handle made up of several tubes is still a rake handle. A recitation narrower than "rake handle" in the parent claim is not necessary to overcome prior art. If claim 57 is found allowable, so should its dependent claim.

Also, the Examiner noted that claim 80 describes an embodiment shown in Fig. 10A which is inconsistent with the embodiment shown in claim 57. On the contrary, Fig.10-A is completely unrelated to claim 80. The telescoping means of

claim 80 is shown in Figs. 33-A through 33-C and Figs. 40-A through 43-C. As shown in Figs. 32-B and 33-C (rake heads were omitted to facilitate drawing), claim 80 clearly embodies all the elements of its parent claim 57. **The retaining means recited in claim 80 is not the connecting means that "flexibly and pivotally hold the two rake handles...". It is simply a way of telescoping one of the rake handles.**

The applicant has amended claim 61 and canceled claim 80. Claim 61 should be allowed.

According to the disclosure, one of the handles of all embodiments of the picking rake can have this telescoping capability.

3. Claim 88 should not be withdrawn from consideration because it could be a an allowable linking claim

Claim 88 is a generic claim that, if found allowable will link the first and one of the second embodiments of the present invention. Therefore, regardless of what embodiment the applicant elects, Claim 88 should be examined. MPEP 821.03 does not apply here because an equivalent claim (claim 64) was indeed presented with the RCE. (see Exhibit B).

4. Restriction Options Provided Do Not Cover All the Claims Pertaining to Each Embodiment - Not Justified:

Restriction is usually imposed on applications covering more than one embodiment except in cases where an allowable linking claim is found. The Examiner and applicant agree on this matter.

All claims directed toward each embodiment should be grouped as one option. This could entail more than one main claim considering that one embodiment can be claimed in more than one way depending on how it is viewed to overcome prior art. They can be structural and/or method claims. Some of these claims can be generic claims linking that one embodiment to the rest of the other embodiments. The options provided by the Examiner do not provide complete coverage of any one embodiment. The restriction was made between two different approaches to claiming the same embodiment.

In this particular case, linking claims 88, 62, and 64 (already canceled but were in the RCE) may not be classified under any embodiment but should be included in claims that are going to be examined regardless of what embodiment the applicant decides. The applicant informed the Examiner that claims 88, 62 and 64 are linking claims covering the First embodiment among others. **Therefore, new claims 111 and 112 replacing the canceled linking claims 62 and 64 respectively should also be examined. (see Exhibits A and B.)**

Also, in this particular case, all Group I and Group II claims should all be included as one group because they describe the same first embodiment.

5. Restriction Options Provided Do Not Cover All The Embodiments Claimed in the RCE - Not Justified. MPEP 821.03 Limitations Do Not Apply

A linking claim can be a generic claim that links species claims. There is more than one embodiment or species disclosed in the application. The first embodiment is covered by Figs. 1-A through 5 -C, the second is shown

in Fig. 6-A through 9-A and a third is shown in Figs.10-A through 12-A. The first embodiment is described in the specifications as Version I (non-detachable). The second and third embodiments are described as Version II (completely detachable). The applicant presented with the RCE a claim 62 (now canceled) which, if examined closely, is a generic claim linking these three embodiments - claim 68 for the first embodiment, claim 69 for the second, and claim 75 for the third. The entire set - claims 62 through 76 were rejected for the reason that they are anticipated which did not have any basis according to the definition of anticipation set forth by MPEP 2131. This prompted the applicant to argue against this reason for rejection.

A narrower generic claim 88 was presented in the response to the first OA linking only the first and second embodiments. The third embodiment was presented as an independent claim 95. The Examiner pointed out in the Substance of the Interview Summary that the new claims appear to introduce new embodiments that were not considered on their merits before. The applicant pointed out that claim 88 essentially has the elements of claim 64. **If the Examiner considers the new claims to be new embodiments even if they were presented earlier under different claim numbers, this means that claims 62-76 were rejected without the Examiner realizing what embodiments they cover and therefore without due examination on their merits. This confirmed the applicant's arguments that rejection for the reason that they were anticipated by prior art has no basis.**

Since the First Embodiment is in one of those claims (claim 68) the Examiner should therefore re-examine not just claim 88 but also claim 62, 64, and 68. No justification was

offered by the Examiner as to: a) why claim 64 is essentially not claim 88, b) why claims 62 and 64 or 88 are not listed as possible linking claims. **MPEP 821.03 does not apply here because the claims for the three embodiments linked by a generic claim 62 were indeed presented in the RCE and even as early as the original application (essentially Claim 1). No new embodiments were ever introduced in any of the applicant's replies to OA's.**

Since, by Examiner's admission that the Second and Third embodiments were not yet duly examined on their merits, these embodiments should have been made part of the restriction options in case no linking claim is found allowable. The claims pertaining to the Second and Third Embodiments are:

a) Second embodiment - Claim 69(canceled) and claim 74(canceled) or 92 - Group III

b) Third embodiment - Claim 75 (canceled) or claim 95 - Group IV

(Note: First embodiment - Claim 68(canceled) and Groups I & II claims)

Therefore, Group III and Group IV should have been added as election options.

In any case, the election of either the first embodiment (Group I and Group II), second embodiment (Group III), or third embodiment (Group IV) necessitates the examination of the new generic claims 111 and 112(to replace canceled claims 62 and 64 respectively) and claim 88 that could link them all. This is pursuant to MPEP 809 par. 6. which states:

"The linking claims must be examined with the invention elected, and should any linking claim be allowed,

the restriction requirement must be withdrawn. Any claim(s) directed to the non-elected invention(s), previously withdrawn from consideration, which depends from or includes all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability. Where such withdrawn claims have been canceled by applicant pursuant to the restriction requirement, upon the allowance of the linking claim(s) the examiner must notify the applicant that any canceled, non-elected claim(s) which depends from or includes all the limitations of the allowable linking claim may be reinstated by submitting the claim(s) in an amendment. Upon entry of the amendment, the amended claim(s) will be fully examined for patentability."

6. Pending claims should include all the claims entered whether or not they are withdrawn from consideration

As the Office Action Summary form (PTOL-326) itself shows, the section pertaining to Disposition of Claims, the item 4a) is a subset of claims in item 4) just above it. Therefore, claims 78-80 and 88-105 should have been considered pending first before being withdrawn. In other words, even withdrawn claims are classified as pending claims. The applicant is not aware of the implications associated with this particular divergence. Hopefully, it does not make any difference.

7. Absent the allowance of any linking claim, the three embodiments may still not be restricted pursuant to MPEP 806.04(h) - Species Must be Patentably Distinct From Each Other. It states:

"...In a national application containing claims directed to more than a reasonable number of species, the examiner should not require restriction to a reasonable number of species unless he or she is satisfied that he or she would be prepared to allow claims to each of the claimed species over the parent case, if presented in a divisional application filed according to the requirement. Restriction should not be required if the species claimed are considered clearly unpatentable over each other.

In making a requirement for restriction in an application claiming plural species, the examiner should group together species considered clearly unpatentable over each other, with the statement that restriction as between those species is not required..."

Three possibilities can happen namely:

A. Claim 62 is found allowable:

If linking claim 62 is found allowable, all three embodiments could be allowed pursuant to MPEP 809 par.6 quoted above and 37 CFR 1.141(a) which states:

"Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim..."

B. Claim 62 is not allowable but 64 or 88 is

If linking claim 62 is not found allowable but claim 64 or 88 is found allowable, the second embodiment may also be allowed. The third embodiment is not linked within claim 62 but may not be restricted still pursuant to **MPEP 806.04(h)** above. The explanation is as follows:

Figures 10-A to 12-B show claims 75(canceled) or 95 which cover the third embodiment. Figure 13-A show claims 74 or 93 which cover a narrower version of the second embodiment(claim 69). The apertured tube and the snap button elements of claim 75 or 95 could be obvious over the apertured elongated resilient member and snap button of claim 74 or 93 if only because they look very similar so that each of them can be mistaken for the other. Both connecting means provide abutment in the same manner. After all, the resilient member can be viewed as a tube with a longitudinal slit. Therefore, they could be construed as obvious over each other, thus, unpatentable over each other. This means that the third embodiment may not be restricted from the second embodiment in the parent patent.

C. No linking claim is found allowable

Then, again, if no linking claim is found allowable - that is, neither claim 62 nor claim 88 is found allowable and the applicant has chosen the first embodiment, the Examiner should also consider if the second and third embodiments are patentably distinct from the first embodiment.

Note that the only elements separating the first embodiment from the second is the presence of the pivotal connection in the first embodiment and not in the second and the presence of the arm leverage in the second embodiment and not for the first. Everything else is common

to both of them. Actually several figures in the disclosure even show arm leverages for the first embodiment as well (see Figs. 50-53).

As described in claim 88, both have a connecting means on the handles comprising at least one resilient member opening sideways, hand grips, dual rake heads, and a side-by-side handle arrangement. Also, the disclosure clearly states that the rake heads can be overlapped for both versions of the picking rake (see p. 22 subtitled Rake Head Variation, par.1). The recitation of these common elements is actually sufficient to overcome prior art. The applicant had gone to great lengths to argue that the resilient member, hand grips, and overlapping rake heads of the present invention are not equivalent to that of Mitchell. That is why at least claim 88 should be allowed, in which case, the linked first and second embodiments cannot be restricted. Arguing whether they are actually patentably distinct or obvious over each other becomes unnecessary.

Claim Amendments: Remarks and Arguments

The Examiner suggested that the applicant make amendments to pending claims to make them clearer and more distinct.

Claim 57

Pursuant to the Examiner's correct admission that Group I claims (unlike Group II) do not need the specifics of the pivotal connection, the applicant is amending claim 57. The first and second connecting means (now gripping and pivotal connections respectively) are replaced with "connecting means...comprising a gripping connection..."

Also, the term "grip handle" is replaced with "hand grip" to effect consistency with the specifications and the other claims. The term "removably connected" is deleted and replaced with "coupled", a broader term but still within the scope of the present invention and not necessary to overcome prior art. The first and second portions on the hand grips are replaced with first and second portions on the rake handle, after the hand grips is made part of the rake handle. Lastly and most importantly, the gripping mechanism is specified as operating on a gripping plane substantially normal to the raking plane swept by the longitudinal axes of the rake handles. This last change very significantly differentiates the present invention from Mitchell such that the other elements can be broadened without going into the realm of prior art.

Claims 58 and 59 - self explanatory

Claim 60

The amendment further clarifies the operation of the gripping connection.

Claim 61

Claim 61 is amended to incorporate some of the clarifying elements in claim 80.

Claims 78-79

Dependent claims 78 -79 are canceled in view of the canceled parent claim 105.

Claim 80

Claim 80 is canceled in view of claim 61.

Claim 81

The amendment basically replaces the words "connecting means for flexibly and pivotally connecting..." to "connecting means for holding... comprising a pivotal connection for flexibly and pivotally...". The other elements are also clarified.

Claims 82-86

The amendment changes the term "connecting means" to "pivotal connection".

Claim 87

The amendment provides an antecedent for the term "first and second inner sides" recited in the claim in the previous version.

Claim 88

The amendment further clarifies the operation of the resilient member of the gripping connection to distinctly differentiate from prior art.

Claim 92

The term "arm leveraging means" is recited more specifically. Please note that in some cases where the hand grip(first branch) is on both the second plane and the first plane (at the intersection of the first and second planes), the second branch is between the first branch and the upper end of the rake handle. In cases where the hand grip is on the second plane only, the second branch is between the upper end of the rake head and the first branch. (See Exhibit A)

Claim 93

The term "first connector" is replaced with gripping connection.

Claim 94

The amended claim is patterned after claim 61.

Claim 95

The words " the handles next to each other side-by-side, their longitudinal axes substantially parallel and distinct from each other" has differentiated the shorter handle of the present invention from the semi-cylindrical handle of Mitchell. The longitudinal axes of the handles in Mitchell's rake are coincident, therefore, not distinct.

Claim 97

The term "arm leveraging means" is recited more specifically just like in claim 92.

Claim 98

Amended to pattern after claim 61.

Claim 99

Amended to incorporate amendments in claim 81.

Claims 100 - 104 are canceled in view of claim 81-86 and 99.

Claim 105 is canceled.

New Claims:

Claims 106, 107, and 108

These are new dependent claims to independent claim 81 in order to completely cover the first embodiment and to show that claim 81 does indeed embody the first embodiment.

Claim 109

This is a claim dependent on claim 81 that recites a narrower version of one of the rake handles by specifying that it comprises of at least two telescoping tubes. This is patterned after claim 61.

Claim 110

This claim specifies the connecting means to include the pivoting connection in addition to the gripping connection in the parent claim 88, thus completing the First Embodiment. An equivalent claim was not presented earlier because it would have been redundant and unnecessary in view of the already allowed claim 57.

Claims 111, 112, and 113 (essentially claims 62, 64, and 68)

The applicant is submitting these claims again because the Examiner had not duly examined them on their merits. If Claim 111 and/or 112 are found allowable, the dependent claims that cover the other embodiments will be re-instated for examination pursuant to MPEP 806 par. 6 above.

Claim 111

This is essentially canceled claim 62 plus specification on the distinctness of the longitudinal axes of the rake handles in order to further differentiate from

prior art. This claim could link the three embodiments.
(See Exhibit A)

Claim 112

Claim 111 plus the gripping connection and its operation. This claim could link the first and second embodiments.

Claim 113

Claim 112 plus pivotal connection, thus completing the first embodiment.

Claim 114

Claim 112 plus arm leveraging means thus completing the second embodiment.

Claim 115

Claim 111 plus tube and snap button connecting means, thus completing the third embodiment.

Claim 116

Re-entry of the deleted "aperture...through which a second connecting means is extended..." in order to complete the first embodiment.

Provisional Election

Pursuant to Patent Rule 1.143 and 1.144, the applicant provisionally elects the **First Embodiment** subject to:

- a) a reconsideration of any restriction based on the reasons presented above,
- b) all linking claims are examined on their merits and none is found allowable, and

- c) the second and third embodiments are considered clearly patentably distinct and unobvious over the first embodiment such that claims in a divisional patent claiming the second and third embodiments will have to be allowed pursuant to MPEP 806.04(h).

Group I and Group II claims describe the same First Embodiment. It is difficult to comprehend why a restriction to either Group I and Group II could be imposed if both groups describe the same embodiment and if there is no serious additional burden on the part of the Examiner to examine the two groups of claims. They belong to the same class, subclass, and field of search. No patent rule is traversed by simply allowing both if they are already found to embody patentable matter.

However, if the applicant must unfortunately and unjustifiably further choose between Group I and Group II even if they both cover the same first embodiment, the applicant provisionally chooses the amended Group I and claim 116 with traverse.

Pursuant to Patent Rule 1.144, the applicant may petition the Commissioner to review the requirement if the restriction between Groups I and II is made final without due consideration of the compelling valid reasons presented above and without adequate valid counter explanation as to why the reasons presented are not applicable.

Request for Constructive Assistance

If the submitted claims are found to embody patentable matter but are still not technically adequate, the applicant respectfully requests the constructive assistance an suggestions of the Examiner pursuant to MPEP 706.03(d) and MPEP 707.07(j) in order that the applicant can place this application in allowable condition as soon as possible without the need for further proceedings.

Thank you.

Respectfully yours,



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Date: 6/23/04

Inventor's Signature: Mary Ann Canaba